

530 new

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name Wilder Cornell
(Last) (First)

Prisoner Number C-16564

Institutional Address P.O. Box 8103, V-1, D-4, 12, S.L.O. Calif 93403-8103

FILED
FEB 25 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CV 08 1129

Cornell Wilder
Full Name of Petitioner

Case No. 08-1129
(To be supplied by the Clerk,
United States District Court)

vs.

E-filing

John Marshall
Name of Respondent
(Warden or jailor)

PETITION FOR A WRIT OF HABEAS CORPUS

(PR)

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

08-1129 WHA

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainers), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

(a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

Alameda County Superior Court Oakland, California
Court Location

(b) Case number, if known 69342

(c) Date and terms of sentence May 14, 1980

(d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes ☒ No ☐

Where? California Mens Colony P.O. Box 8103, San Luis Obispo CA
(Name of Institution) (Address) 93409

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

Second degree murder 15 years to life Penal Code §190

3. Did you have any of the following?

Arraignment: Yes ☒ No ☐ Preliminary Hearing: Yes ☒ No ☐

Motion to Suppress: Yes ☒ No ☐

4. How did you plead?

Guilty _____ Not Guilty ☒ Nolo Contendere _____

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have?

Jury ☒ Judge alone _____ Judge alone on a transcript _____

6. Did you testify at your trial? Yes ☒ No _____

7. Did you have an attorney at the following proceedings:

- (a) Arraignment Yes ☒ No _____
 (b) Preliminary hearing Yes ☒ No _____
 (c) Time of plea Yes ☒ No _____
 (d) Trial Yes ☒ No _____
 (e) Sentencing Yes ☒ No _____
 (f) Appeal Yes ☒ No _____
 (g) Other post-conviction proceeding Yes ☒ No _____

8. Did you appeal your conviction? Yes ☒ No _____

(a) If you did, to what court(s) did you appeal?

Court of Appeal	Yes <input checked="" type="checkbox"/>	No _____	_____	_____
			(Year)	(Result)
Supreme Court of California	Yes <input checked="" type="checkbox"/>	No _____	_____	_____
			(Year)	(Result)
Any other court	Yes _____	No _____	_____	_____
			(Year)	(Result)

(b) If you appealed, were the grounds the same as those that you are raising in this petition? Yes _____ No ☒

(c) Was there an opinion? Yes _____ No _____

(d) Did you seek permission to file a late appeal under Rule 31(a)? Yes _____ No ☒

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes ☒ No _____

Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. § 2244(b).

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

- I. Name of Court Northern District Court
 Type of Proceeding Writ of Habeas Corpus
 Grounds raised (Be brief but specific):
 a. Ineffective Assistance of Counsel
 b. Miranda Rights
 c. _____
 d. _____
 Result Denied Date of Result To long ago
- II. Name of Court Ninth Circuit
 Type of Proceeding Writ of Habeas Corpus
 Grounds raised (Be brief but specific):
 a. Ineffective Assistance of Counsel
 b. Miranda Rights
 c. _____
 d. _____
 Result Denied Date of Result To long ago
- III. Name of Court United States Supreme
 Type of Proceeding Review by Certiorari
 Grounds raised (Be brief but specific):
 a. Ineffective Assistance of Counsel

b.

Miranda Rights

c.

d.

Result

DeniedDate of Result 1984 or 1985

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court? Yes No X

(Name and location of Court)

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you need more space. Answer the same questions for each claim.

Note: You must present ALL your claims in your first federal habeas petition. Subsequent petitions may be dismissed without review on the merits. 28 U.S.C. § 2244(b); McCleskey v. Zant, 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).

Claim One: Did the Board of Parole Hearings violate petitioner's Sixth Amendment as incorporated in the Fourteenth of the U.S. Constitution

Supporting Facts: The Board of Parole Hearings violated petitioner's jury trial guarantee to his constitutionally prescribed base term found in the California Code of Regulations, Title 15 § 2403 et seq.,

(Please See Attached)

Claim Two: Did the Board of Parole Hearings violate petitioner's Fifth Amendment as incorporated in the Fourteenth of the U.S. Const.

Supporting Facts: The California Code of Regulations, Title 15 § 2403, channels the Board of Parole Hearings decision-making with substantive predicates and explicitly mandatory language a protected liberty interest in a base term. (Please See Attached)

Claim Three: Did the Board of Parole Hearings violate petitioner's Fourteenth Amendment right to the U.S. Constitution

Supporting Facts: The Board of Parole Hearings violates petitioner's right to the benefit of good time credits to reduce his total period of confinement, "fixing a parole release" California Code of Regulations Title 15 §§ 2403 thru 2409

If any of these grounds was not previously presented to any other court, state briefly which grounds were not presented and why:

List, by name and citation only, any cases that you think are close factually to yours so that they are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning of these cases:

In re Lee, 143 Cal. App. 4th 1400 (2006); In re Elkins, 144 Cal. App. 4th 475 (2006); Biggs v. Terhune, 334 F.3d 910 (2003); Rosenkrantz v. Marshall, 444 F. Supp. 2d 1063 (2006); Irons v. Carey 2007 WL 2027359; Cunningham v. California 2007 U.S. LEXIS 1354

Do you have an attorney for this petition? Yes ☐ No ☒
 If you do, give the name and address of your attorney:

WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

Executed on

Feb. 18, 2008
Date

Cornell Wilkin

Signature of Petitioner

(VERIFICATION - 446, 2015.5 C.C.P.)

STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

I am the party of the above entitled actions, a citizen of the United States, over the age of eighteen years and a resident of San Luis Obispo County. My current address is:

Cornell Wilder CDC No. C-16564
California Men's Colony-West
P.O. Box 8103 Unit 1 Dorm 4 Bed 12
San Luis Obispo, California 93403-8103

I CERTIFY (OR DECLARE), UNDER THE PENALTY OF PERJURY, THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON _____, 20____, AT SAN LUIS OBISPO, CALIFORNIA, 93403-8103

Cornell Wilder
PETITIONER

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

I AM A RESIDENT OF SAID COUNTY, OVER THE AGE OF EIGHTEEN YEARS, AND NOT A PARTY TO THE ABOVE ENTITLED ACTION. MY STATE PRISON ADDRESS IS:

Ronald L. Backus CDC No. K51945
California Men's Colony-West
P.O. Box 8103 Unit 1 Dorm 4 Bed 14
San Luis Obispo, California 93403-8103

ON _____, 20____, I SERVED THE WITHIN Writ of Habeas Corpus

ON THE PARTY: United States District Court for the Northern District
450 Golden Gate Ave, Box 36060, San Francisco CA 94102

IN SAID ACTION, BY PLACING A TRUE COPY THEREOF IN A SEALED ENVELOPE WITH POSTAGE THEREON PREPAID, IN THE UNITED STATES MAIL, AT CALIFORNIA MEN'S COLONY, SAN LUIS OBISPO, CA, 93403-8103, ADDRESS AS FOLLOWS:

United States District Court for the Northern District
450 Golden Gate Ave., Box 36060
San Francisco, CA 94102

I DECLARE, UNDER THE PENALTY OF PERJURY, THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON _____, 20____, AT SAN LUIS OBISPO, CALIFORNIA

R. L. Backus
SIGNATURE OF DECLARANT

Prayer For Relief.

Petitioner is without remedy save by writ of habeas corpus.

WHEREFORE, petitioner prays the court:

1. Issue the writ of habeas corpus;
2. Declare the right of petitioner, as to his constitutional period of incarceration Penal Code § 2041(b) and found in the Board's regulations, California Code of Regulations Title 15, Division 2 Article 5, § 2411;
3. Conduct an evidentiary hearing if necessary to resolve any factual disputed issues, and after the hearing, issue an order directing the Board to act as set forth in paragraph 2, above;
4. Reverse the Board's finding of unavailability to the base term of confinement as mandated in the regulations;
5. Restore Petitioner's entitlement to his liberty interest found in the base term of confinement regulations § 2403 and discharge Petitioner;
6. Grant any other and further relief the court deems proper.

Date: Feb. 18, 2008

Respectfully Submitted,

Cornell Wilder

In Pro Per

United States District Court
Northern District of California

In re
Cornell Wilder
Petitioner
On Habeas Corpus

Memoandum of Points And
Authorities In Support of
Petition For Writ Of Habeas
Corpus And Evidentiary
Hearing

Introduction

1. Petitioner, Cornell Wilder, a state prison inmate appearing in pro
per, hereby petitions this Court for a Writ of Habeas Corpus,
pursuant to 28 U.S.C. § 2254.
2. Petitioner claims that he is unlawfully restrained of his
freedom in violation of his rights under the Fifth, Sixth and
Fourteenth Amendments of the United States Constitution.

Parties

3. Petitioner, Cornell Wilder, is unlawfully restrained of his

liberty at the California Mens Colony, in San Luis Obispo, Calif.
 arrived by Warden John Marshall pursuant to a judgment of
 the Superior Court of Alameda County.

Statement of Facts

4. This petition does not challenge the verdict or finding of the superior court Penal Code §§ 190, 1168(b). However Petitioner does challenge the parole suitability hearing held on December 6, 2005, and the Board of Parole Hearings [hereinafter BPH's] failure to establish a parole release date. The BPH's continues to violate the mandate of the Legislature to "... comply with the Judicial Council's sentencing rules in setting a parole release for petitioner sentenced under the Uniform Determinate Sentencing Act of 1976. (Penal Code § 3041 et seq.)

5. The BPH's repeated application to preponderance of the evidence concerning the facts of petitioner's crime after the initial parole suitability hearing violates his Due Process right to a constitutionally prescribed base term. "The base term shall be established solely on the gravity of the base term". (Calif. Code Regs., tit. 15 §§ 2000(50), 2402 and 2403.)

6. Furthermore, the BPH's has violated petitioner's Sixth Amendment jury trial guarantee that requires any fact which increases petitioner's "base term" beyond the proscribed regulations maximum must be submitted to a jury and be proven beyond a reasonable doubt. The statutory maximum envisioned in Appendix 530 U.S. 466, is the maximum base term found the BPH's may impose based solely on facts reflected in the jury verdict and found in the "base term" matrix, Calif. Code Regs., tit. 15, § 2403 et

1 seq., In re Hogen 1986 Cal. App. LEXIS 2301, at p. 5, In re Dannenberg.
 2 2005 Cal. LEXIS, at p. 11, the state has violated petitioner's Sixth
 3 Amendment right to the U.S. Constitution.

4 7. Petitioner alleges that the state has violated his protected liberty
 5 interest, within the meaning of the Due Process Clause of the Fifth
 6 and Fourteenth Amendments to the U.S. Constitution by placing
 7 substantive limitations on the BPH's term setting authority.
 8 (Calif. Code Regs., tit. 15, § 2402.)

9 8. The legislative mandate was a... "release date shall be set in a
 10 manner that will provide uniform terms for offenses of similar gra-
 11 vity and magnitude in respect to their threat to the public. (Penal Code
 12 § 2041, (a) compare Calif. Code Regs., tit. 15, § 2402.)

13 9. The BPH acts the same as the sentencing court in considering
 14 probation, at the initial parole suitability hearing when the BPH
 15 considers parole at the minimum term. (Calif. Code Regs., tit. 15, § 2402
 16 compare Cal. Rules. Ct. 11.414.)

17 10. In this case the BPH's, after finding petitioner unsuitable for
 18 his minimum term, denied petitioner the Due Process of law to
 19 his constitutionally prescribed base term in violation of the
 20 Fourteenth Amendment to the U.S. Constitution.

21 11. The BPH's continues to hold initial parole suitability hearings
 22 under Cal. Code Regs., tit. 15, §§ 2268 and 2402, to deny petitioner's base
 23 term Cal. Code Regs., tit. 15, § 2403 in violation of his Sixth Amendment
 24 right to the U.S. Constitution. If, the term was established for the
 25 crime and any adjustments resulting in a total period of confinement
 26 Cal. Code Regs., tit. 15, § 2411, fixing a parole date, then parole hearings
 27 would be held to determine whether a set parole date should be ad-
 28 vanced because of petitioner's conduct in prison. (Cal. Code Regs., tit. 15,

1. § 2269.)
2. 12. The PPH's application of the California Code of Regulations, Title 15,
3. Article 11 et seq., creates an absurdity in petitioner being incar-
4. cerated beyond his actual total period of confinement fixing a par-
5. ole date. (Calif. Code Regs., tit. 15, § 2411, see *Church of the Holy*
6. *Trinity v. United States*, 1892 U.S. LEXIS 2036 at p. 3; *United*
7. *States v. American Traveling Assn., Inc.*, 1210 U.S. LEXIS 1049
8. at p. 2.)
9. 13. The BPH's failure to establish petitioner's constitutionally pre-
10. scribed base term at his initial parole suitability hearing or
11. at any of the following hearings under Cal. Code Regs., tit. 15, §
12. 2267 violates his Fourteenth Amendment right to due process
13. and his Sixth Amendment right to trial by jury a base term
14. Calif. Code Regs., tit. 15, § 2403.
15. 14. Clearly the parole procedures used by the PPH's deprive
16. petitioner the due process of law to a constitutionally prescrib-
17. ed base term set within the jury's determination beyond a
18. reasonable doubt of all facts legally essential to his parole
19. release date. (Calif. Code Regs., tit. 15, § 2403 accord *In re Hannenberg*
20. 2005 Cal. LEXIS 570 at p. 11.)
21. 15. Taken together petitioner has an entitlement to and a vested
22. interest in a base term circumscribed by Calif. Code Regs., tit.
23. 15, § 2403, subds. (a) and (c) based on the jury's determination
24. that petitioner is guilty of every element of the crime with
25. which he was charged, beyond a reasonable doubt. (See E.g.,
26. *In re Winship*, 397 U.S. 358, 264, 25 L. Ed 2d 268, 90 S. Ct. 1068.)
27. 16. The question presented, is whether the statutory maximum
28. of life is the maximum the PPH's may impose after addition-

1. al findings of fact at petitioner's initial parole suitability hear-
2. ing Calif. Code Regs., tit. 15, §§ 2202, 2402, or is the regulations
3. in addition the maximum the PPHC may impose with additional
4. findings after denial of petitioner's minimum term. (Calif.
5. Code Regs., tit. 15, § 2403.)

1. **Claim - 1**

2. Whether the PPH's deputy commissioner's failure to consider
 3. the California Code of Regulations, Title 15, Div. 2, Chapter 3, Article 11,
 4. § 2403 (Base term) violates petitioner's right to a jury trial guaran-
 5. tee of the Federal Constitution's Sixth Amendment (U.S. Const. Amend. 6)
 6. as incorporated in the Due Process Clause of the Fourteenth Amen-
 7. dment (U.S. Const. Amend. 14).

8. On or about May 14, 1950 after a jury trial, petitioner was sen-
 9. tenced to a term of 15 years to life Penal Code § 190. After complet-
 10. ing 10 years plus good time credits of 5 years petitioner appeared
 11. before the Board of Prison Terms (now renamed the Board of
 12. Parole Hearings). The Commissioner's found petitioner unsuitable
 13. for parole at the judicially imposed minimum term of 15 years as-
 14. sed on the crime and the facts found.

15. Each time petitioner appeared before the Board, the commissioners
 16. refused to establish a base term as provided by the California
 17. Code of Regulations, Title 15, Div. 2, Article 11, § 2403;

18. "The base term shall be established solely on the
 19. gravity of the base crime, taking into account all
 20. of the circumstances of that crime." (Id. § 2403)

21.
 22. The California Supreme Court in *Dannenberg* pronounced distinctly
 23. 2005 Cal. LEXIS 570 at p. 11;

24. "Once the proper matrix is selected, the Board
 25. must impose the middle term unless it finds
 26. aggravating or mitigating circumstances not
 27. accounted for in the matrix. (Cal. Code Regs., tit.
 28. 15, § 2403 (c).")

1. On December 4, 2005 petitioner appeared before the Board of Parole
 2. Hearings [hereinafter BPH's] for his third (3) parole suitability
 3. hearing after serving twenty six (26) years of a 15 to life sentence.
 4. Petitioner was once again denied a base term, that portion of the
 5. total period of confinement which reflects the seriousness of the base
 6. crime. The commissioner's denied parole based on the circum-
 7. stances that petitioner "... would pose an unreasonable risk of
 8. danger to society or threat to public safety if released from
 9. prison. Certain facts in petitioner's commission of offense were
 10. once again considered to deny the base term (See Lodgment 1, p. 46).

11.
 12. Petitioner contends that the Board of Parole Hearings [hereinafter
 13. BPH's] commissioner's failure to establish a base term as re-
 14. quired by the California Code of Regulations, Title 15, Div. 2, Article
 15. 11, § 2401, subdivision (a) violates petitioner's right to jury trial
 16. guarantee of the Federal Constitution's Sixth Amendment.

17.
 18. Does the rule of Apprendi and Blakely apply to the following:
 19. The Board of Parole Hearings, acts in a quasi-judicial man-
 20. ner at the initial parole hearing in compliance ... "with the
 21. sentencing rules that the Judicial Council may issue". (Penal Code §
 22. 3041(a), see Calif. Code Regs., tit. 15, § 2401.)

23. The commissioners shall first determine whether petitioner is
 24. suitable for release on parole. (Calif. Code Regs., tit. 15, § 2402.)

25. Applying a preponderance of the evidence Calif. Code Regs., tit. 15 §
 26. 2000 (50) "good cause", considers parole of petitioners minimum
 27. eligible parole release date. (Penal Code, §§ 177, 2641.)

28. At the initial parole hearing, does the BPH's consider the mini-

1 minimum term as found by the jury, elements plead and proven beyond
 2 reasonable doubt? If the BPHC finds more than the minimum
 3 necessary to sustain the verdict or finding as found by the
 4 jury Penal Code sections 1140, 1168, subd. (b), the BPHC has
 5 discretion to defer parole of the minimum eligible parole
 6 release date. (Penal Code § 3041 (b), In re Rosenkrantz 2002 Cal.
 7 LEXIS 8317.)

8 Does reliance on the crime after the initial parole suitability
 9 hearing Penal Code section 3041 et seq. applying the California
 10 Code of Regulations, Title 15, sections 2401, 2402 violate petition-
 11 ers Sixth Amendment right to a vested, base term found in
 12 Calif. Code Reg., tit. 15, § 2403?

13 On December 6, 2005, petitioner appeared before the BPHC
 14 for his third (?) parole suitability hearing after serving
 15 twenty six (26) years of a 15 to life sentence. Petitioner was
 16 once again denied a release date based on the circumstances
 17 that he... "would pose an unreasonable risk of danger
 18 to society or threat to public safety if released from prison".
 19 Certain facts of the commitment offense and the nature of
 20 petitioner's crime were not taken into account. (See Lodgment
 21 at p. 46.)

22 Did the BPHC arbitrarily deny petitioner a base term in
 23 violation of his Sixth and Fourteenth Amendment.

24 In *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 234, 147
 25 L.Ed.2d 435 (2000), the Supreme Court held that the Due
 26 Process Clause of the Fifth and Fourteenth and the Sixth
 27 Sixth Amendment jury trial guarantee required that any fact
 28 which increases the penalty for a crime beyond the

1 prescribed statutory minimum must be submitted to a jury and
 2 be proven beyond a reasonable doubt. Just four years later in
 3 *Blakely v. Washington*, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed. 2d
 4 403, (2004) the Court explained that the statutory maximum as,
 5 envisioned by *Apprendi*, is the maximum sentence a judge
 6 may impose solely on facts reflected in the jury verdict or
 7 admitted by a defendant.

8 Just six months later in the case of *In re Mannerberg*, 2005
 9 Cal. LEXIS 570 at p.11, the California Supreme Court held that
 10 "the matrix specifies lower, middle and upper 'base terms'
 11 for each matrix category. For second degree murderers, ser-
 12 ving statutory sentences of 15 years to life, these 'base ter-
 13 ms' range from 15, 16 or 17 years for the least serious matrix
 14 category to 19, 20 or 21 years for the most serious."

15 Just what is the maximum allowable period of confinement
 16 under the California Determinate Sentencing Law, which as-
 17 signs a sentencing range of low term, middle term and up-
 18 per term to crimes? Both, the California Rules of Court
 19 section 4.420(b) and the California Code of Regulations, Title
 20 15, section 2403, subdivision (a) mandate that the Sentencing
 21 Court and the BPA's cannot impose an upper term with-
 22 out finding factors in aggravation. In other words, may
 23 the BPA's impose a sentence of life absent some judi-
 24 cial factfinding to justify the sentence?

25 Since *Apprendi* and *Blakely* prohibit a court from engaging
 26 in factfinding to impose a sentence higher than what it
 27 could render without a specific finding by a jury or an
 28 admission by a defendant, would the same rule apply

1 to also limit the BPH's in selecting the middle base
2 term as the maximum allowable, without a specific find-
3 ing by a jury or admission by petitioner?

4 Here, Petitioner is not contending that the Apprendi-Blakely
5 rule applies to which of the 3 terms to select, or even
6 which of the various triads of terms within the matrix
7 applies to the case. Instead, it is Petitioner's contention
8 that the BPH's cannot make findings regarding the crime
9 to altogether take it out of the prescribed matrix which
10 applies based on the facts already determined by a jury.

11 Does the imposition of a life term sentence by the Board,
12 applying a preponderance of the evidence based on quasi-
13 judicial finding or factors in aggravation, violate Apprendi,
14 and Blakely?

15 The Board's obligations have been set up in a way that is
16 identical to a court's sentencing obligations in determinate cases.
17 In addition to being supported by the California Supreme
18 Court's direct ruling on this point in *Robertson*, as likewise
19 found in *Hogan*, this clearly flows logically from
20 how the BPH's functions are defined under the relevant
21 statutory and regulatory criteria. (*In re Robertson*, 2005 Cal.
22 LEXIS 7962, *In re Hogan*, 1986 Cal. App. LEXIS 2301.)
23 "The Board's determination is based upon the same criteria
24 which governs determinate sentencing, including the need to
25 provided uniform terms for offenses of similar magnitude
26 and gravity, the number of victims of the crime, and other
27 factors in mitigation or aggravation of the crime. (Penal Code
28 § 3041, subd. (a))." (*In re Hogan* 1986 Cal. App. LEXIS 2301

1 at p. 5.)

2 Is the relevant statutory maximum, the maximum the
3 EPH may impose after first imposing the minimum
4 necessary to sustain the conviction or is the regulations
5 maximum section 2403(c) the maximum the EPHs may im-
6 pose based on elements plead and proven at trial? (Calif.
7 Code Regs., § 2403.)

8 The regulations applies specifically to noncapital murder-
9 ers like petitioner who committed his crime on or after
10 November 8, 1975. (Calif. Code Regs., tit. 15 § 2403 et seq.)

11 Does the Regulations complying with the Judicial Council's
12 sentencing rules circumscribe the EPH's role in estab-
13 lishing a base term constrained at its outer limits by
14 facts alleged in the indictment and found by the jury ver-
15 dict? (Calif. Code Regs., § 2403.)

16 Does the Regulations clearly mandate imposition of the
17 middle term unless the EPH makes additional findings in
18 aggravation or mitigation? (Calif. Code Regs., § 2403, see
19 In re Dannenberg, 2005 Cal. LEXIS 570 at p. 11.)

20 Does the Cunningham Rule apply to the EPHs in
21 setting a middle base term within the matrix at the initial
22 parole suitability hearing, after consideration of the
23 minimum term Penal Code § 190?

24 Does the EPH have a clear, present and minister-
25 ial duty to comply with the requirements of the Judicial
26 Council's sentencing rules? (Penal Code § 2041(a).)

27 At all times relevant herein the EPHs has had and
28 continues to have a duty to comply with the Judicial

1 Council's sentencing rules (Cal. Code Regs., tit. 15, Article 11.
 2 Notwithstanding the duty to establish a base term and
 3 ability to do so, the BPH's has failed, refused and continue
 4 to fail in performing their duty as required by law. (Cal.
 5 Code Regs., tit. 15, § 2403.)
 6 In doing so the BPH's failure has denied petitioner
 7 his Sixth and Fourteenth Amendment rights in violation
 8 of the federal Constitution. (See *Apprendi v. New Jersey*,
 9 530 U.S. 466, 490, *Blockey v. Washington*, 592 U.S. 296,
 10 and *Cunningham v. California*, 2007 U.S. LEXIS 1324.)

1 Claim 2

2 Whether the Board of Parole Hearings Commissioner's failure to
3 establish the base term violates petitioner's right to a liberty in-
4 terest guarantee of the Federal Constitution's Fifth Amendment
5 (U.S.C.A. Const. Amend. 5) as incorporated in the Due Process
6 Clause of the Fourteenth Amendment (U.S.C.A. Const. Amend. 14).

7
8 Petitioner contends that the Board of Parole Hearings com-
9 missioner's failure to establish a base term as required by
10 California Code of Regulations, Title 15, Div. 2, Article 11, §2403
11 violates his right to a liberty interest guarantee of the Fifth
12 Amendment.

13 Petitioner has a legitimate claim of entitlement the BPH's should
14 recognize as being lawful and settled according to the California
15 Code of Regulations, Title 15, §2403, which petitioner cannot be de-
16 prived of by arbitrary or capricious means. (Board of Regents
17 v. Roth, 1972 U.S. LEXIS 131.)

18 Petitioner contends, initial parole suitability hearing in August
19 , 1988, the Board of Parole Terms (now renamed Board of Parole
20 Hearings) considered whether petitioner was suitable for
21 release of his judicially imposed minimum term. (Penal Code §
22 190(a), (1988).) The BPT applied its discretion base on the
23 jury's verdict of the elements pled and proven at trial beyond
24 a reasonable doubt. (Calif. Code Regs, tit. 15, §2402, see general In r
25 Rosenkrantz, 2002 Cal. LEXIS 8317.)

26 Before this Court will recognize a constitutionally protected libe
27 ty interest, state law must direct that a given action will be
28 taken or avoided only on the existence or nonexistence of

1 specified substantive predicates. (See *Olim v. Wakinekona*, 461 U.S.
 2 238, 249, 75 L.Ed. 2d 813, 103 S.Ct. 1741 (1983); *Hewitt v. Helms*,
 3 459 U.S. 460, 470-72, 74 L.Ed. 2d 675, 103 S.Ct. 864 (1983);
 4 *Greenholtz v. Inmates of the Nebraska Penal and Correct-*
 5 *ional Complex*, 432 U.S. 1, 11-12, 60 L.Ed. 2d 688, 99 S.Ct. 2100
 6 (1979).

7 Petitioner contends that, section 2403 of Title, 15, California
 8 Code of Regulations, creates a liberty interest, that vested, at
 9 his initial parole consideration hearing. The state based on the
 0 petitioner as an individual in the crime of which he was senten-
 11 ce established an entitlement to a constitutionally prescribed
 12 base term. (Calif. Code Regs., tit. 15, §§ 2401, 2403.)

13 Section 2403 of the California Code of Regulations, Title 15, specifies
 14 in pertinent parts:

15 "The base term shall be established solely on
 16 the gravity of the base crime taking into ac-
 17 count all of the circumstances of that crime".

18 "The base term shall be established by utiliz-
 19 ing the appropriate matrix of base terms pro-
 20 vided in this section". And "...the panel shall
 21 imposed the middle base term".

22
 23 Section 2403 therefore, constitutes a procedural guideline that
 24 channels the decision-making of the commissioners in estab-
 25 lishing a base term compelling claim to procedural safe-
 26 guards. (*Wolff v. Mc Donnell*, 1974 U.S. LEXIS 91 at p. 3.)

27 The relevant regulations maximum the P-H's may impose
 28 has been articulated by the California Supreme Court:

"Once the proper matrix category is selected, the ^{Board} must impose the middle term unless it finds aggravating or mitigating circumstances not accounted for in the matrix. (Cal. Code Regs., tit. 15 § 2403(a).)"

(See *In re Dannenberg*, 2005 Cal. LEXIS 570 at p.11.)

Petitioner contends, the PPH's violated his liberty interest in a constitutionally prescribed base term which is a fundamental right complete and consummated, and of such character that it cannot be divested without a hearing governed by the procedures mandated in *Wolff v. McDonnell*, 1974 U.S. LEXIS 91.

Prior to petitioner's initial parole suitability hearing, he was in constructive possession of a minimum 15-year term with a potential life term, as found by a jury verdict, reduced with good time credits. (*In re Jeanice* (1980) 168 Cal. Rptr. 455, 457-58, 21 Cal. 3d. 210.)

Petitioner contends, the BPH's considers parole of the minimum term 15 years based on the jury's finding of facts regardless of the time served. That would grant the PPH's total discretion to the minimum term petitioner has served plus enhancements prior to his initial parole suitability. (Calif. Code Regs., tit. 15, § 2402 see general, *In re Rosenkrantz*, 2002 Cal. LEXIS 8317.)

Section 2402, et seq., merely creates a possibility of discretionary parole release to a minimum term Penal Code § 190; it does not create a constitutionally protected liberty interest. (See *Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex* 442 U.S. 1, 60 L.Ed. 2d 668, 43 L.Ct. 2100 (1979). Therefore

1 section 2402, does not create a liberty interest in parole release
2 from confinement at anytime before expiration of a valid sen-
3 tence.

4 Just what is a valid sentence with respect to persons sentenced
5 to indeterminate terms?

6 "The purpose of punishment is satisfied by the requirement
7 of service of a minimum period before eligibility for parole."
8 (In re Morrell, 2002 Cal. App. LEXIS 4672 at p. 11, see also
9 People v. Jefferson, 1999 Cal. LEXIS 4851 at p. 14.)

10 This conclusion, however, does not address the question of
11 whether California Code Regulations, Title 15, § 2402 creates an
12 entitlement to a liberty interest in a base term set after
13 denial of discretionary parole, of a minimum term. (Penal Code
14 § 190, applying Calif. Code Regs., tit. 15, §§ 2268, 2402.)

15 The BPHS is the only authority authorized to set the duration of
16 the term. Under Penal Code section 3041, subd. (a), one year prior
17 to petitioner's minimum eligible parole release date, the BPHS
18 either sets the release date or because of public safety, considera-
19 tions subdivision (b) of 3041 defers setting the 15 year minimum
20 term Penal Code section 190.

21 Whereas here, the sentencing court imposed a minimum term,
22 did the BPHS have two options at petitioner's initial parole eligi-
23 bility hearing?

24 First, the BPHS could have in the exercise of its discretion, up-
25 hold the judicially-imposed minimum term 15 years Penal Code
26 section 190. In this case petitioner's release date would have
27 been at the end of the minimum term 15 years August, 1989,
28 with good time credits. (Pen. Code §§ 190, 2931.)

The BPH's second option was to defer the minimum term, Calif. Regs., § 2402 and establish a base term in the matrix Calif. Regs., § 2403 ... "the base term shall be established solely on the gravity of the base crime" and ... by utilizing the appropriate matrix of base terms provided in this section. "The panel shall impose the middle base term reflected in the matrix." (Calif. Code Regs., tit. 15, § 2403(a).)

Petitioner's contention, the BPH's application of Calif. Code Regs., tit. 15, Article 11, et seq., has been unconstitutionally applied in the exploitation of Calif. Regs., § 2402 a discretionary paroling authority that creates an irrational and unreasonable result that is inconsistent with what is described with "substantive predicates" and "explicitly mandatory language." (Calif. Code Regs., § 2402.)

Section 2403 standing alone, therefore, constitute a procedural guideline that channels the decision-making of the BPH's. (See *Hewitt v. Helms*, 459 U.S. at 471.

However, section 2411 Calif. Code Regs., tit. 15 provides that "the terms established for the base crime and any adjustments shall be added together resulting in a total period of confinement." (Id., § 2411.)

Those substantive predicates are contained in section 2403 and include standards for petitioner's base term as an individual in his crime. (See also, Pen. Code § 3041, (b).)

The BPH's application of the California Code of Regulations, Title 15, Div. 2, Article 11, et seq., has lead to an absurd results that is plainly at variance with the policy of the legislation as a whole. (*Church of the Holy Trinity v. United States*, 143 U.S. 457; *United States v. American Trucking*

1 Asen, Inc., 204 U.S. 299, 27 S.Ct. 1012, 5 L.Red. 1012, 101 S.Ct. 1012 (1904).
 2 The court in *Asen* 204 U.S. 299, 27 S.Ct. 1012, 5 L.Red. 1012, 101 S.Ct. 1012 (1904).

3 In the circumstances of this case, the BPH's continued re-
 4 liance upon the nature of petitioner's crime to deny parole
 5 in December, 2005, violates the due process of law. First
 6 continued reliance upon the unchanging facts of petitioner's
 7 crime makes a claim of California's parole system and
 8 amounts to an arbitrary denial of petitioner's liberty
 9 interest. (*Biggs v. Terhune*, 339 U.S. 910.)

10 Second, in this case, the circumstances of petitioner's
 11 crime do not amount to some evidence supporting the con-
 12 clusion, that petitioner is currently posing an unreasonable
 13 risk of danger to the public.

14 Third the remaining reasons used to deny parole on
 15 December 6, 2005, cannot be found in establishing a
 16 base term plus adjustments for the fixing of a par-
 17 ole release, violating the due process of law. (See
 18 Calif. Code Regs., tit. 15 §§ 2403-2411.)

19 The same reasons use at petitioner's first and se-
 20 cond parole hearings were again used in December,
 21 2005 to deny parole.

22 Because there was no reliable evidence supporting
 23 the BPH's conclusion that petitioner was unviable for
 24 parole, the Superior Court's determination violates the
 25 process of law under the federal Constitution. Fourteenth
 26 Amendment (U.S. C.A. Const. Amend. 14.)

27 The state courts determination to the contrary, was based upon
 28 an unreasonable determination of the facts in light of the

1 evidence presented during the parole hearing and amount-
2 ed to an unreasonable application of clearly established
3 Supreme Court precedent. (Apprendi v. New Jersey, 530 U.S.
4 466; Blakely v. Washington, 542 U.S. 296; Cunningham v. Calif-
5 ornia, 2007 U.S. LEXIS 1324; Superintendent v. Hill, 472
6 U.S. 462; Galt v. McDermott, 1974 U.S. LEXIS 91.)

SUBSEQUENT PAROLE CONSIDERATION HEARING
STATE OF CALIFORNIA
BOARD OF PAROLE HEARINGS

In the matter of the Life)
Term Parole Consideration)
Hearing of:)

CDC Number C-16564

CORNELL WILDER)
_____)
_____)

**INMATE
COPY**

CALIFORNIA MEN'S COLONY
SAN LUIS OBISPO, CALIFORNIA
DECEMBER 6, 2005

PANEL PRESENT:

Mr. Stephen LEE, Presiding Commissioner
Mr. Orlando MEJIA, Deputy Commissioner

OTHERS PRESENT:

Mr. Cornell Wilder, Inmate
Mr. Michael Beckner, Attorney for Inmate
Correctional Officers Unidentified

CORRECTIONS TO THE DECISION HAVE BEEN MADE

_____	No	See Review of Hearing
_____	Yes	Transcript Memorandum

Deborah A. Doane, Peters Shorthand Reporting

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P R O C E E D I N G S

1
2 **PRESIDING COMMISSIONER LEE:** Mr. Cornell
3 Wilder, CDC Number C-16564, location is CMC
4 East, the date of hearing is December 6, 2005.
5 The inmate was received on May 14, 1980 out of
6 the County of Alameda in Case No. 69342, the
7 offense was murder in the second degree pursuant
8 to Penal Code Section 187. The term was set at
9 15 years to life, minimum eligibility for parole
10 September 11, 1989. At this time, we will make
11 our appearances. My name is Stephen Lee, L-E-E,
12 Commissioner Presiding.

13 **DEPUTY COMMISSIONER MEJIA:** My name is
14 Orlando Mejia, M-E-J-I-A, Deputy Commissioner.

15 **ATTORNEY BECKNER:** Michael Beckner,
16 Attorney for Mr. Wilder.

17 **INMATE WILDER:** Inmate Wilder.

18 **PRESIDING COMMISSIONER LEE:** Your CDC
19 number, sir?

20 **INMATE WILDER:** C-16564.

21 **PRESIDING COMMISSIONER LEE:** We have an
22 officer here for security purposes as well.

23 **DEPUTY COMMISSIONER MEJIA:** Commissioner,
24 we have (inaudible) tape, but this back up is
25 working.

26 **PRESIDING COMMISSIONER LEE:** We'll check
27 it on occasion. If there is a problem, then

1 obviously we will deal with it. Counsel, I have
2 a document, it is marked as Exhibit 1 as well as
3 Exhibit 2. It appears that Exhibit 1 is a
4 check-off list, do you have documents listed in
5 Exhibit 1?

6 **ATTORNEY BECKNER:** Yes, I do.

7 **PRESIDING COMMISSIONER LEE:** Now in
8 regards to Exhibit 2, there appears to be a
9 signature on it. Is this the inmate and your
10 signature?

11 **ATTORNEY BECKNER:** Yes.

12 **PRESIDING COMMISSIONER LEE:** Did you go
13 over with the inmate his inmate rights, the
14 hearing procedures, as well as the ADA
15 information?

16 **ATTORNEY BECKNER:** Yes, the inmate has
17 been briefed, and he is aware of his rights. He
18 knows the procedures very well.

19 **PRESIDING COMMISSIONER LEE:** In regards to
20 the ADA, does the inmate have any accomodations
21 that need to be provided to him?

22 **ATTORNEY BECKNER:** No.

23 **PRESIDING COMMISSIONER LEE:** You do not
24 know of any disabilities that he has that would
25 interfere with this hearing?

26 **ATTORNEY BECKNER:** No.

27 **PRESIDING COMMISSIONER** All right. Sir,

1 at this point in time, do you want me to go
2 through the ADA, the hearing procedures, or the
3 inmate rights, or would you wish for me to go
4 into your case?

5 **INMATE WILDER:** You can go into the
6 case (inaudible).

7 **PRESIDING COMMISSIONER LEE:** Let's get
8 into the inmate's case at this time. Sir, you
9 have the right to be heard by an impartial
10 panel. Do you have any objections to myself and
11 to Mr. Mejia?

12 **INMATE WILDER:** No, sir.

13 **PRESIDING COMMISSIONER LEE:** Thank you.
14 The inmate was born on December 6, 1948 in
15 Oakland, California, raised by both parents in
16 Oakland. He was the oldest of six children
17 (inaudible) marriage of Isaac and Beulah Wilder.
18 It appears that the parents had an older child
19 by a previous relationship. His father was a
20 molder who died August of 1973 of a heart
21 attack. At the time of the inmate's arrest, the
22 inmate's mother lived in Clear Lake, California,
23 where she owned a restaurant of some kind.

24 The inmate received average grades,
25 attending school to the 11th grade, and his
26 family appears to be normal. He grew up in a
27 nice area. All of his brothers and sisters were

1 employed and apparently hard working people.

2 The inmate married Brenda, T-R-E-G-L-E,
3 in 1968 and they were separated a year later.
4 At the time of the arrest, the inmate was
5 legally married, but had been separated for
6 eleven years. During the separation, he had two
7 common law relationships. One was Joyce Young
8 with whom he had a son, and the second
9 relationship was with Shirley Bolden, who is the
10 victim of this case.

11 Sir, now before I go any further, I know
12 you had a situation with your brother, how did
13 that (inaudible).

14 **INMATE WILDER:** (Inaudible) July 14.

15 **PRESIDING COMMISSIONER LEE:** The date that
16 we were having the hearing?

17 **INMATE WILDER:** Yes, I think we had the
18 meeting on the 13th, he passed the following
19 morning (inaudible).

20 **PRESIDING COMMISSIONER LEE:** You are the
21 oldest, so he must have been a younger brother
22 then?

23 **INMATE WILDER:** (Inaudible).

24 **PRESIDING COMMISSIONER LEE:** I know that
25 has nothing to do with your parole, but I was
26 just wondering how - are you okay with that?

27 **INMATE WILDER:** I am doing the best I can,

1 Mr. Lee.

2 **PRESIDING COMMISSIONER LEE:** Were you
3 close with your brother?

4 **INMATE WILDER:** Yes, we were close.

5 **PRESIDING COMMISSIONER LEE:** I forgot, he
6 was sick, wasn't it?

7 **INMATE WILDER:** Yes, he died of cancer.

8 **PRESIDING COMMISSIONER LEE:** Are you in
9 contact with the rest of your siblings?

10 **INMATE WILDER:** Yes, (inaudible).

11 **PRESIDING COMMISSIONER LEE:** Does your
12 mother still have a restaurant?

13 **INMATE WILDER:** No, sir, she is retired
14 now.

15 **PRESIDING COMMISSIONER LEE:** I am curious,
16 what kind of restaurant, a bed and breakfast
17 kind of thing?

18 **INMATE WILDER:** It was a - I have pictures
19 of it (inaudible).

20 **PRESIDING COMMISSIONER LEE:** The inmate
21 has no military history. The inmate indicated
22 he used marijuana occasionally between 1970 and
23 1980. He said he used cocaine a few times in
24 1978, started drinking alcohol between 1973 and
25 1980, but said his drinking increased in 1973
26 after his father died. When your father died,
27 how old were you?

1 **INMATE WILDER:** I was 23 years old.

2 **PRESIDING COMMISSIONER LEE:** How much were
3 you drinking at that time?

4 **INMATE WILDER:** I would say at least one
5 or two six packs of beer (inaudible).

6 **PRESIDING COMMISSIONER LEE:** Apparently
7 your wife said you changed at that point when
8 you started drinking more. In what way did you
9 change?

10 **INMATE WILDER:** When my father passed it
11 was hard.

12 **PRESIDING COMMISSIONER LEE:** Were you
13 close to your father?

14 **INMATE WILDER:** Yes, very close, and I
15 didn't know how to deal with that. To be
16 honest, I have never gotten (inaudible) to that.

17 **PRESIDING COMMISSIONER LEE:** Is it because
18 you were younger or because of the way he died?

19 **INMATE WILDER:** Partially the way he died,
20 it was unexpected. My dad was more like my best
21 friend (inaudible). I could confide in him,
22 (inaudible). We found out even more after he
23 passed away, that he had been sick for two
24 years, and he never told us.

25 **PRESIDING COMMISSIONER LEE:** He knew about
26 it, but he didn't tell you guys about it?

27 **INMATE WILDER:** Yes, we discovered it

1 through letters he had in the files. He had a
2 file cabinet, and he kept the letters to himself
3 (inaudible). That didn't help. We come from a
4 family that we are all very close, we are still
5 close. I don't understand how you can tell my
6 sister (inaudible), we still talk about it.
7 They still go out and visit the gravesite, but
8 we never believed - even after all this time
9 (inaudible).

10 **PRESIDING COMMISSIONER LEE:** It is cliché,
11 but usually the older child and the younger
12 child are the closest, I guess you being the
13 older child, you spent the most time with your
14 father?

15 **INMATE WILDER:** Yes.

16 **PRESIDING COMMISSIONER LEE:** I am sorry to
17 hear that. It is difficult to think that our
18 parents are mortal, that I know for a fact.

19 **INMATE WILDER:** Yes.

20 **PRESIDING COMMISSIONER LEE:** How was your
21 relationship with your mother?

22 **INMATE WILDER:** No different. She is like
23 my best friend. We talk a lot.

24 **PRESIDING COMMISSIONER LEE:** She comes to
25 visit you obviously?

26 **INMATE WILDER:** She did - she loves to
27 come to visit. She can't stand to come and see

1 me out here, she likes the privacy to be able to
2 sit and talk. She wants to come up, but now
3 being her age because she is 85, I was telling
4 her right now we will just talk on the phone.
5 She has to travel close to 400 miles to get
6 here?

7 **PRESIDING COMMISSIONER LEE:** Where is she?

8 **INMATE WILDER:** She is still living in
9 Clear Lake. We are trying to talk her into
10 moving out of Clear Lake now -

11 **PRESIDING COMMISSIONER LEE:** You and your
12 family?

13 **INMATE WILDER:** My sisters.

14 **PRESIDING COMMISSIONER LEE:** It is good to
15 have family. It is one of the few things that
16 you hold on to. You are a lifer, you know all
17 of these guys in here, they are not talking
18 about their homies or their wives any more, they
19 are talking about family right?

20 **INMATE WILDER:** That's true.

21 **PRESIDING COMMISSIONER LEE:** All right,
22 the inmate's prior convictions. He has no
23 juvenile arrests. The inmate apparently had a
24 burglary in 1967, which was from a vehicle. In
25 1968 he had what appears to be joy riding. In
26 1970, he had possession of marijuana. In 1970,
27 again, he had 60 days - okay, I see. The 11

1 through 530 which is old, old section, and they
2 gave him one-year probation for possession of
3 marijuana. It was changed to 11 through 57,
4 which, again, he was convicted of in 1975 and
5 was given (indiscernible) again. Actually, sir,
6 you don't have very much a conviction of
7 anything. The only thing you actually have is
8 stealing a car in '68.

9 Then we get into the facts of the case.
10 This is being taken from the Board report. Per
11 the POR of April 15, 1980, Wilder and Shirley
12 Bolden had previously lived together from March
13 1977 to July 1979. Sometime after their break
14 up, the victim obtained a restraining order. On
15 August 24, 1979 during the early morning, the
16 inmate approached the victim in the driveway of
17 her home in Oakland, California.

18 The reports indicate that you approached
19 her as she was entering her car and plus to talk
20 to her. She threw up her hands and you took
21 them and put them down by her side. After a
22 brief struggle, Wilder strangled Ms. Bolden with
23 his hands. The POR is not clear as to the
24 sequence, or at some time, the inmate tied two
25 ropes around Ms. Bolden's neck and one rope
26 around her wrist. He then drove her car with
27 her body in the trunk to the lot of the Coliseum

1 Bart Station.

2 Wilder walked over to 84th street and
3 borrowed a car from his aunt. At 1:30, the
4 inmate transferred her body to the trunk of his
5 aunt's car and drove Shirley Bolden's car to the
6 Emeryville Marina leaving her car in the parking
7 lot.

8 He took BART back to the Coliseum Station
9 where he got into his aunt's car and continued
10 driving. At some point in time, he bought a
11 shovel. The inmate proceeded to Stockton where
12 he spent the night at his brother's home. The
13 next morning he drove to an asparagus field, dug
14 a grave, and buried the victim.

15 At this point in time, Mr. Wilder, I've
16 gone over your juvenile convictions, your drug
17 convictions, your social history, as well as the
18 facts of the crime. Is there anything at this
19 point in time, sir, that you would like to
20 clarify, or did I misstate anything in the
21 record?

22 **INMATE WILDER:** (Inaudible), it is pretty
23 much correct.

24 **PRESIDING COMMISSIONER LEE:** All right.
25 Now, let's talk about this. Obviously you had
26 feelings for this woman, why did you break up?

27 **INMATE WILDER:** To me, it was my stupidity

1 is the only way I can put it.

2 **PRESIDING COMMISSIONER LEE:** Well, it is
3 usually what women say about us. Okay, go
4 ahead. So, what did you do?

5 **INMATE WILDER:** It started - you know
6 (inaudible). I was an individual that really
7 didn't show feelings very much. I know Shirley
8 and I would get up in the morning, she would
9 always maybe give me a kiss or "I love you", so
10 I would say, yes, I love you too (inaudible),
11 not realizing this is something that should
12 (inaudible). I was stubborn, I would say, she
13 knew me, why say it (inaudible). Later on her
14 birthday was coming up in June, and this was off
15 and on (inaudible). She says, okay,
16 baby, (inaudible). Being my background, also,
17 (inaudible) because I was also doing (inaudible)
18 at the time. She comes home, (inaudible), there
19 was no relationships there, but I didn't realize
20 she was really jealous (inaudible). So, her
21 birthday was coming up in June of '79, I decided
22 myself and a friend of mine were going to
23 surprise her to Reno. He has a camper. He
24 said, (inaudible), and he said well I can go up
25 with you too, and I said okay. So, I asked
26 Shirley's sister to contact me and (inaudible),
27 and I said don't say anything to Shirley, that

1 is what I am trying to do. So, instead, she did
2 say something to Shirley. I came home one
3 evening and Shirley says to me, you guys, I know
4 (inaudible) next to the telephone. Again, I
5 said okay and kept walking. I think that was
6 two weeks after I came home, I (inaudible)
7 truck, I (inaudible) Camero, I had a '61 Camero.
8 I pulled up and I was taking the chains off the
9 truck, and there was two cars (inaudible) police
10 coming down the street. So, I just kind of
11 looked up and (inaudible). They come down, they
12 were so loud, and they asked me, they said, Mr.
13 Wilder, you are wanted for carrying a gun, do
14 you have one on you. I said, no. He said there
15 has been a restraining order issued, you can't
16 enter your home. I said restraining order, and
17 he said, yes. I assumed from the conversation
18 to the best of my recollection, he had been in
19 the house because he said you have a nice home.
20 I looked at him and I just said thank you. So,
21 he asked me if there was anything you want out
22 of the house. I said, the way I have two guns,
23 can you bring them out. He said, okay. I said
24 will you ask - clearly I want to take them down
25 to my mother's house and leave them at my
26 mother's house (inaudible) -

27 **PRESIDING COMMISSIONER LEE:** Hold on. You

1 are telling me that you didn't even have a fight
2 with her and somehow there was a restraining
3 order put out against you?

4 **INMATE WILDER:** There was a problem, but
5 never a restraining order, (inaudible) find out
6 later.

7 **PRESIDING COMMISSIONER LEE:** The police
8 officers thought so. They apparently helped you
9 get your things out of the house.

10 **INMATE WILDER:** I seen that was true, and
11 they told me there was a restraining order
12 issued, and I didn't realize until going to
13 trial. My attorney, Mr. (Indiscernible) asked
14 him. He said, Cornell, I thought you said there
15 was a restraining order issued against you, and
16 I said there was. I said my cousin was standing
17 there when the policeman said it. So, he was
18 looking and says (inaudible), and I said what's
19 that, and he said there wasn't one issued.

20 **PRESIDING COMMISSIONER LEE:** You go and
21 you don't - obviously, you try to contact your
22 girlfriend to find out what that was all about I
23 assume?

24 **INMATE WILDER:** Yes.

25 **PRESIDING COMMISSIONER LEE:** What did she
26 tell you.

27 **INMATE WILDER:** We didn't really talk

1 because being upset, me personally, I was upset.
2 So, it was a few days and we tried to talk, and
3 I asked a friend of mine, Rodney, a guy I knew,
4 can you set up a meeting, I would like to talk
5 to her.

6 **PRESIDING COMMISSIONER LEE:** I wish you
7 had done it by phone, but anyway, okay.

8 **INMATE WILDER:** Yes, I do too in
9 hindsight. It was my impatience and stupidity,
10 that is the only way I can put it, not thinking
11 rationally how to deal with the situation of me
12 and her.

13 **PRESIDING COMMISSIONER LEE:** Let me get
14 this straight now, I don't want to misquote you.
15 You think everything is going okay, and then all
16 of the sudden you come home one day, and you
17 find out that the police are there saying that
18 you can't go home.

19 **INMATE WILDER:** I can't enter the house.

20 **PRESIDING COMMISSIONER LEE:** Yeah, and
21 then you don't talk to her, and you have no
22 idea, at least up until this point in time why
23 this is occurring?

24 **INMATE WILDER:** No.

25 **PRESIDING COMMISSIONER LEE:** Interesting,
26 all right. So, then you go up to talk to her
27 that morning obviously?

1 **INMATE WILDER:** Yes.

2 **PRESIDING COMMISSIONER LEE:** I am assuming
3 you ask her what is going on?

4 **INMATE WILDER:** I asked her, I said, hey
5 baby, I want to talk to you. So, she threw her
6 hands up and I put her hands down at her side
7 and hold my hands on her shoulders. She just
8 took a deep breath, and she (inaudible).

9 **PRESIDING COMMISSIONER LEE:** Okay, I'm not
10 going to go into the physical part right now.
11 Obviously, you will have an opportunity to talk
12 about that, but I am more concerned about
13 doesn't she tell you that she is tired of you
14 hitting her or tired of you ignoring her, or
15 tired of something, leaving your socks on the
16 ground, something?

17 **INMATE WILDER:** I'm pretty sure in
18 hindsight that phone number that day - we didn't
19 talk after that. I came home off that phone
20 number, she didn't say anything to me, there was
21 no conversations.

22 **PRESIDING COMMISSIONER LEE:** You are
23 saying something about the telephone number is
24 the reason why she was made at you.

25 **INMATE WILDER:** I'm assuming that she
26 thought that somebody that I wanted to see or I
27 was trying to see.

1 **PRESIDING COMMISSIONER LEE:** You never did
2 find out?

3 **INMATE WILDER:** No.

4 **PRESIDING COMMISSIONER LEE:** Obviously, it
5 was a bad situation. She puts her arms up, you
6 put them down, and then what happens?

7 **INMATE WILDER:** She takes one breath, and
8 she passes out. From there, Mr. Lee, I'm going
9 to just refer to the (inaudible) to the previous
10 statements that have been made concerning the
11 offense.

12 **PRESIDING COMMISSIONER LEE:** Basically,
13 you are saying you did not intend to kill her.

14 **INMATE WILDER:** Mr. Lee, for me to say
15 that now, I would have a problem with because
16 not realizing my state of mind that morning of
17 being upset. If I was to say, I think I would
18 have to say I couldn't honestly answer that and
19 say I didn't mean to because of being upset.

20 **PRESIDING COMMISSIONER LEE:** You are
21 saying that you probably mean to?

22 **INMATE WILDER:** Yes.

23 **PRESIDING COMMISSIONER LEE:** How about
24 alcohol or drugs, you were apparently smoking
25 marijuana, you indicated that you had been
26 drinking in the past, did you have anything to
27 drink, to smoke, or any type of drugs that

1 morning or the night before?

2 **INMATE WILDER:** After the crime from the
3 police reports also had it (inaudible) after the
4 crime, I stopped at a liquor store on
5 (inaudible).

6 **PRESIDING COMMISSIONER LEE:** That's after,
7 I am asking about before?

8 **INMATE WILDER:** No.

9 **PRESIDING COMMISSIONER LEE:** No?

10 **INMATE WILDER:** No, I did not.

11 **PRESIDING COMMISSIONER LEE:** How do you
12 feel about this, you killed somebody that you
13 cared about, you've been down quite a few years?

14 **INMATE WILDER:** Mr. Lee and Gentlemen, I
15 think about this every single minute. I miss
16 Shirley. Do I think I will get over the things
17 (inaudible), no. I can't. (Inaudible). She was
18 a daughter, a mother, and a sister. I allowed
19 my emotions to get the best of me, and I think
20 about that, not only what I did that morning to
21 hurt her but to other people, as well as her
22 daughter, her family, my family. There were
23 many people hurt by a stupid act. There was no
24 reason for it if I had taken my time to think
25 about it and figure out how to approach it
26 without trying to say, well, this is what I want
27 to (inaudible). There is no one to blame except

1 me, and it took me awhile because you always try
2 (inaudible), you always try to put blame on
3 other people. For awhile, I tried to act like
4 it was the (inaudible). (Inaudible), why, I've
5 never considered it (inaudible), and those
6 things that happened prior to that, and all I
7 had to do was acknowledge it and just like the
8 number also, tell her what (inaudible), quit
9 trying to be - I guess the proper term would be
10 not showing your emotions. That was one of my
11 biggest mistakes, never showing emotion. It is
12 sad to say I've had to get older to realize and
13 see (inaudible) to be able to relate to my own
14 emotions. I don't how to correct this, there is
15 nothing I can do except try to be the individual
16 now that I should have been then. I do accept
17 responsibility for my stupidity. It hurts, I
18 prefer to be by myself. There were going to be
19 periods of mental problems that I had over the
20 years as I was trying to deal with my act
21 because I didn't know how to deal with it, it
22 was hard. It is still hard. Shirley was - I had
23 a relationship with ladies, but I never had a
24 relationship and the feelings I had like I had
25 with Shirley. We were like two (inaudible).
26 She was my best friend, my confidant, I liked to
27 sit down and talk to her. My brother

1 (inaudible) we were pretty close, and she even
2 (inaudible) worked it out and he would sit and
3 talk with her at times (inaudible). My brother
4 and I started going from the 9th grade
5 (inaudible). To have a lady that she can become
6 your best friend, I thought I knew, but I didn't
7 because I didn't confide in her with the issues
8 of the emotions, my emotions and my feelings.
9 You come to think that you know someone you
10 know, and that is what I discovered because I
11 didn't really know myself (inaudible).

12 **PRESIDING COMMISSIONER LEE:** Are you
13 different now?

14 **INMATE WILDER:** Mr. Lee -

15 **PRESIDING COMMISSIONER LEE:** You seem
16 different.

17 **INMATE WILDER:** Quite a bit different,
18 age. It took time - it's like I could just come
19 in and my first parole hearing and tell people,
20 okay, this is what I see, I couldn't do that. I
21 have to know (inaudible) are here. That is what
22 I feel. I'm not (inaudible). If I have to do
23 this time, I have to do this time. (Inaudible),
24 not what I feel. Now I can tell you what I feel
25 and what I see, and what I have to live with
26 every day because she was a human being and she
27 was my wife (inaudible).

1 **PRESIDING COMMISSIONER LEE:** At this time,
2 rather than going over things twice, the Deputy
3 Commissioner will discuss with your programming,
4 assuming you have done programming as well as
5 self-help and your psychological.

6 **DEPUTY COMMISSIONER MEJIA:** institution
7 since your last parole hearing. Your last Board
8 appearance was on May 21, 2001. You received a
9 four-year denial. And the recommendations were
10 for you to remain disciplinary free, upgrade
11 vocationally and educationally, participate in
12 self-help and therapy. Custody level is medium
13 A, classification score is 19. (Inaudible) PIA
14 (inaudible) -

15 **INMATE WILDER:** (Inaudible) since January.

16 **DEPUTY COMMISSIONER MEJIA:** Yes. How long
17 have you been a (inaudible)?

18 **INMATE WILDER:** It was two years ago -
19 this month is two years ago.

20 **DEPUTY COMMISSIONER MEJIA:** So you're
21 still in PIA?

22 **INMATE WILDER:** Yes, sir.

23 **DEPUTY COMMISSIONER MEJIA:** It wasn't in
24 my file (inaudible). What do you do in the PIA
25 (inaudible)?

26 **INMATE WILDER:** I do (indiscernible) and
27 repair.

1 **DEPUTY COMMISSIONER MEJIA:** Of what?

2 **INMATE WILDER:** Different kinds of
3 equipment, (inaudible).

4 **DEPUTY COMMISSIONER MEJIA:** (Inaudible)
5 PIA (Inaudible).

6 **INMATE WILDER:** (Inaudible) and prepare it
7 if necessary.

8 **DEPUTY COMMISSIONER MEJIA:** And
9 (inaudible) -

10 **PRESIDING COMMISSIONER LEE:** (Inaudible)
11 self-help and study for problems that I can see.
12 That's not good - a sole reason that you are
13 doing it is simply because you choose not to do
14 it and I hope that later on when you get the
15 opportunity it to speak that you can address
16 that. Commissioner, I'm sorry.

17 **DEPUTY COMMISSIONER MEJIA:** And, vocation.
18 Did you complete any vocations?

19 **INMATE WILDER:** (Inaudible).

20 **DEPUTY COMMISSIONER MEJIA:** What skill do
21 you get from working for the PIA? (Inaudible).

22 **INMATE WILDER:** Yes, sir.

23 **DEPUTY COMMISSIONER MEJIA:** I have here
24 (inaudible) 2002, juvenile status (inaudible)
25 PIA (inaudible). It's noted here
26 (indiscernible) extra (indiscernible) enhance
27 his credibility (inaudible). "Mr. Wilder has

1 demonstrated an (indiscernible) self-help and
2 motivation (inaudible) and outstanding
3 (inaudible). Wilder (inaudible) operating and
4 maintaining status of machinery and support
5 equipment. (Inaudible) leather press
6 (inaudible). Wilder is to be commended for his
7 efforts (inaudible)." So you work for the
8 machinaries in (inaudible) printing?

9 **INMATE WILDER:** Yes.

10 **DEPUTY COMMISSIONER MEJIA:** (Inaudible).

11 **INMATE WILDER:** I have a background in auto
12 mechanics. I've been trained (inaudible).

13 **DEPUTY COMMISSIONER MEJIA:** Have you
14 (inaudible)?

15 **ATTORNEY BECKNER:** (Inaudible) job offer
16 (inaudible).

17 **DEPUTY COMMISSIONER MEJIA:** Your self-
18 help. I know at the time of your therapy you
19 did not acknowledge that you have substance
20 abuse or alcohol problems (inaudible).
21 (Inaudible)?

22 **INMATE WILDER:** No.

23 **DEPUTY COMMISSIONER MEJIA:** (Inaudible)
24 substance abuse?

25 **INMATE WILDER:** No, sir. I have been
26 (inaudible) twenty-five years of my own
27 choosing, not that it is not accessible in the

1 institution. I choose not to indulge.

2 **DEPUTY COMMISSIONER MEJIA:** (Inaudible) in
3 1986 (inaudible), page number - the second to
4 the last page. 1986 (inaudible).

5 **PRESIDING COMMISSIONER LEE:** Dr. Allison?

6 **DEPUTY COMMISSIONER MEIJA:** Third
7 paragraph, second to last page. You
8 (inaudible) in Dr. (inaudible) that he came to
9 agree with the decision that he was an alcoholic
10 and no longer an addict and he said had led this
11 depression. I did not happen to go into this
12 area, but there is no reason (inaudible)
13 appearing from the records that are agreeable.
14 If you already (inaudible) was anything in
15 alcohol (inaudible) from 1973 (inaudible)
16 starting after (inaudible). The question I have
17 here is the reason I am asking here is I don't
18 see any much - I don't see any AA or any
19 substance abuse participation when it comes to
20 self-help. I see you have some one on one type
21 therapy in the 80's, but you have not attended
22 any kind of substance abuse, so you still need a
23 (inaudible) -

24 **INMATE WILDER:** Yes, sir. I've also taken
25 random drug tests during my incarceration -

26 **DEPUTY COMMISSIONER MEIJA:** I read that.

27 **INMATE WILDER:** -- and if I was using, I

1 would just sit here and tell you to your face
2 that I do not choose to use, I have not used.

3 **DEPUTY COMMISSIONER MEIJA:** What other
4 self-help groups have you attended. I'm going to
5 tell you - I'm going to put on record your most
6 recent. What self-help groups did you attend
7 that would help you deal with those issues when
8 it comes to insight -

9 **INMATE WILDER:** I think starting with one
10 of the groups that I have attended lately was
11 ABP.

12 **DEPUTY COMMISSIONER MEIJA:** That was in
13 2002?

14 **INMATE WILDER:** Yes. I've taken also
15 (inaudible) after that -

16 **DEPUTY COMMISSIONER MEIJA:** Angry
17 Management and (inaudible) -

18 **INMATE WILDER:** Yes.

19 **DEPUTY COMMISSIONER MEIJA:** That was in
20 2004?

21 **INMATE WILDER:** Yes.

22 **ATTORNEY BECKNER:** You took Life Skills
23 three times, 2003, 2003, and 2004.

24 **DEPUTY COMMISSIONER MEIJA:** (Inaudible),
25 there is a gap between your therapy in the 80's
26 and 2002. What -

27 **ATTORNEY BECKNER:** He took an anger

1 control group in June of 1992.

2 **INMATE WILDER:** Let me ask you a question,
3 what groups are available for lifers, unless you
4 are (inaudible)C, sir, you don't receive groups.

5 **DEPUTY COMMISSIONER MEIJA:** (Inaudible),
6 I'm asking you a question, okay? I am asking
7 you a question as to (inaudible) other than
8 1992, those are (inaudible) as to anger
9 management, substance abuse, it is almost like
10 there is a gap. What have you been doing? Have
11 you read books?

12 **INMATE WILDER:** Yes, I do a lot of
13 reading, I just read.

14 **DEPUTY COMMISSIONER MEIJA:** Like what?

15 **INMATE WILDER:** A few of the books I've
16 read, and I still read them are 14 Lessons in
17 Philosophy the Advanced Course, (Inaudible)
18 Christianity, science, and (inaudible), which is
19 a new philosophy, the Secret Doctrines and the
20 Mystical Life of Jesus (Inaudible), the
21 (Inaudible) Gospel of Jesus the Christ, the Lost
22 Books of the Bible, the Forgotten Books of Eden,
23 and presently studying the (Inaudible).

24 **DEPUTY COMMISSIONER MEIJA:** When did you
25 read those books, what period of time?

26 **INMATE WILDER:** Starting from the late
27 80's up until the present.

1 **DEPUTY COMMISSIONER MEIJA:** What did you
2 learn from those books?

3 **INMATE WILDER:** I developed a deep
4 religious background, and I was able to now
5 understand and get in touch with my own failings
6 and to realize more than just to see what life
7 has to offer on the surface because I had to
8 realize who I was as an individual. Until I
9 could accept and understand that, I think that
10 was probably the problems I had on the street
11 because I couldn't recognize and accept and
12 understand -

13 **DEPUTY COMMISSIONER MEIJA:** What is the
14 most recent book that you read about self-help
15 between 2001 and (inaudible)?

16 **INMATE WILDER:** My biggest studies have
17 been the Aquarium Gospel of Jesus the Christ and
18 the (Inaudible) books (Inaudible). The
19 (Inaudible) Book is a religious book.

20 **DEPUTY COMMISSIONER MEIJA:** Anything else
21 you want to add to your self-help?

22 **INMATE WILDER:** Not that I can think of.

23 **DEPUTY COMMISSIONER MEIJA:** According to
24 (inaudible) 2002, personal growth seminar in
25 2003 and another one in 2003, anger management
26 and lasts to 2004. The last apparently
27 mentioned two years prior to that, correct?

1 **INMATE WILDER:** 115, had one 115 1984 for
2 obeying order, (inaudible) 120 days for the
3 same - (inaudible) on the same day. So, this I
4 will leave in documentation in here, so the most
5 serious is the 115 (inaudible), and they double
6 back and give (inaudible).

7 **ATTORNEY BECKNER:** The 115 was reduced to
8 administrative.

9 **DEPUTY COMMISSIONER MEIJA:** It is still a
10 115.

11 **ATTORNEY BECKNER:** Yes.

12 **DEPUTY COMMISSIONER MEIJA:** The thing I am
13 trying to say is the 120 A is the same - it was
14 the same (inaudible) -

15 **INMATE WILDER:** Yes, sir.

16 **DEPUTY COMMISSIONER MEIJA:** I would count
17 the 115 and then 120 A, so that would be one
18 incident of misbehavior as far as incarceration.
19 Validated no (inaudible). The date of the psych
20 report -

21 **ATTORNEY BECKNER:** Commissioner, before
22 you get into the psych report, do you have the
23 chrono's dated May 10, 2005 and October 17,
24 2005?

25 **DEPUTY COMMISSIONER MEIJA:** (Inaudible).

26 **ATTORNEY BECKNER:** One is a critical
27 worker, and this one explains exactly why he was

1 moved into maintenance because his expertise in
2 a wide variety of areas.

3 **DEPUTY COMMISSIONER MEIJA:** I know that he
4 is a pretty good worker, and I would review his
5 file (inaudible).

6 **ATTORNEY BECKNER:** Okay.

7 **DEPUTY COMMISSIONER MEIJA:** (Inaudible)
8 There is (inaudible)-

9 **ATTORNEY BECKNER:** (Inaudible).

10 **DEPUTY COMMISSIONER MEIJA:** I understand
11 that. (Inaudible) 1996, however, just like I
12 said, this is 2001 to 2005, and I appreciate
13 your (inaudible). (Inaudible) piece on
14 institutional expense and safety handling of the
15 prison (inaudible), different machineries,
16 buildings, also capable of lighting (inaudible)
17 electrical systems, (inaudible), hydraulics,
18 (inaudible), and cleaning asbestos. (Inaudible)
19 15 years specializing in (inaudible). In
20 addition to (inaudible) the experience level
21 (inaudible) the complexities of (inaudible) very
22 high allocation level performance (inaudible).
23 So, he is a good worker (inaudible), and he has
24 skills that he can use out on the street,
25 marketable skills. (Inaudible) -

26 **ATTORNEY BECKNER:** You just asked earlier
27 why he was transferred from printing to

1 maintenance. I'm not sure his answer was
2 complete enough -

3 **DEPUTY COMMISSIONER MEIJA:** I was confused
4 about what the Board Report said, he said
5 (inaudible), in fact, you acknowledge that.

6 **ATTORNEY BECKNER:** It was actually a
7 promotion.

8 **INMATE WILDER:** (Inaudible).

9 **DEPUTY COMMISSIONER MEIJA:** On the record,
10 (inaudible).

11 **DEPUTY COMMISSIONER MEIJA:** Anything else?
12 I just want to give you an opportunity
13 (inaudible) before I make my brief presentation.

14 **ATTORNEY BECKNER:** I'm sorry, my last
15 Deputy Commissioner liked me to do it category
16 by category, so I will wait till the end.

17 **DEPUTY COMMISSIONER MEIJA:** This is a
18 matter of (inaudible). Dr. (Inaudible)
19 Psychologist conducted a hearing June 27, 2005,
20 and he established current mental status in the
21 case that Mr. Wilder has recently ended and also
22 has no (inaudible), his client's mood as good and
23 denied any symptoms of depression. He has a
24 history of (inaudible) and denied any current
25 thoughts of harming himself or others. His - the
26 risk for violence assessment has indicated
27 (inaudible) that the outcome of the (inaudible)

1 level of (inaudible) are significantly below the
2 average male offender. (Inaudible) will also
3 support interpersonal and effective in social
4 deviance, and (inaudible) satisfactory score was
5 below that of the average male offender.
6 (Inaudible) below and of the moderate range,
7 while the score on the ACR-20 was on the low
8 range. These results suggest (inaudible) is in
9 the low range. The same report also indicates
10 that - strike that. Is there anything else you
11 want to add, counsel, with regards to the
12 presentation - self-help, psych reports,
13 disciplinary, anything you'd like clarified or
14 (inaudible)?

15 **ATTORNEY BECKNER:** Just that he received a
16 couple laudatories. They were a long time ago
17 of course. (Inaudible) project in participation
18 in research study and those were back in 1992.

19 **DEPUTY COMMISSIONER MEJIA:** Okay.
20 (Inaudible).

21 **PRESIDING COMMISSIONER LEE:** Let's go into
22 the inmate's parole plans. The inmate, if given
23 an opportunity of parole - wait a second here,
24 would like to live in Stockton, California. He
25 has an offer of residence from his brother
26 Sydney Wilder. In addition, he also has an
27 offer of residence from his sister, Barbara

1 Higgins, who also lives in Stockton, California.

2 **ATTORNEY BECKNER:** Commissioner, Sydney
3 Wilder is the brother who died.

4 **PRESIDING COMMISSIONER LEE:** Then you
5 still have Barbara Higgins?

6 **ATTORNEY BECKNER:** Right, that's the
7 primary one.

8 **PRESIDING COMMISSIONER LEE:** In Stockton,
9 California?

10 **ATTORNEY BECKNER:** Yes.

11 **PRESIDING COMMISSIONER LEE:** Wilder says
12 he has a firm job offer in a mechanical
13 maintenance position at Norton Corporation, Inc.
14 Stockton. Is that still available?

15 **INMATE WILDER:** No, sir.

16 **PRESIDING COMMISSIONER LEE:** Because of
17 your brother?

18 **INMATE WILDER:** Yes.

19 **PRESIDING COMMISSIONER LEE:** We do not -

20 **ATTORNEY BECKNER:** Hold on for one second.
21 (Inaudible).

22 **INMATE WILDER:** Yes, and also my sister-
23 in-law there was a (inaudible) job that she
24 could inquire doing janitorial to help me.

25 **PRESIDING COMMISSIONER LEE:** As long as
26 you have a job offer, you are going to have to -
27 if you are unfortunate enough to have to come

1 back again, then you are going to have to get
2 those letters into us, okay?

3 **INMATE WILDER:** (Inaudible). (Inaudible),
4 it is kind of hard to get the job offers.
5 (Inaudible).

6 **PRESIDING COMMISSIONER LEE:** You probably
7 shouldn't have just it for the next (inaudible),
8 you should have probably put a little more time,
9 but hindsight is 20/20 obviously. Anyway, at
10 this point in time, I do have some letters.
11 Pursuant to 3042, there are notices that sent
12 out by various or two organizations that have a
13 special interest in your case. We do have a
14 response. We do have a response first of all
15 dated September 27, 2005 from the City of
16 Oakland, J. Amery, A-m-e-r-y, Lieutenant with
17 the police Homicide. The inmate is coming before
18 the Board Parole Hearing. On August 25, 1979,
19 Shirley Bolden was reported missing on September
20 17, 1979. (Inaudible) were made with the inmate,
21 he was found untruthful on a lie detector during
22 the interview (inaudible) strangling the victim.
23 To (inaudible) and the lack of respect to human
24 life exhibited by the inmate, we urge the Board
25 not to (inaudible). Obviously, it says
26 something a little bit more different, but I
27 don't really want to go into that. The other

1 letter is from Alameda County, the District
2 Attorney's Office, it goes to the facts of the
3 case through various things he has done, and
4 basically indicates -

5 **ATTORNEY BECKNER:** I'm going to object to
6 a paragraph in this letter.

7 **PRESIDING COMMISSIONER LEE:** Which
8 paragraph are you referring to?

9 **ATTORNEY BECKNER:** It is Roman Numeral Two
10 Behavior List for violence, the second page.
11 Actually, the whole - those first two paragraphs
12 of the whole section, it is all hearsay about
13 (inaudible) with his intimate female partners.
14 While I understand allowing these letters with
15 regard to the life crime itself because those
16 facts are deemed admitted by the Board, anything
17 that has to do with the facts that are alleged
18 facts that are not in the record, my client has
19 not ability to confront them. It violates his
20 Sixth Amendment rights to confrontation because
21 he can't cross examine this District Attorney,
22 and we can't cross examine everyone that he is
23 talking about. So, I would ask that the entire
24 section of Roman Numeral Two, Behavioral History
25 of Violence, be stricken and not considered by
26 the Board.

27 **PRESIDING COMMISSIONER LEE:** Your

1 objection is noted. For all of the reasons
2 above, and this is the recommendation section.
3 On behalf of the Alameda County District
4 Attorney's Office, the people of the County of
5 Alameda and the State of California
6 (indiscernible) inmate parole at this time. The
7 inmate remains in dangerous denial about his
8 conduct and responsibility for the loss of his
9 ex-lover's life. I don't think that applies as
10 much now as the inmate has not indicated he was
11 not taking responsibility for the act. I will
12 indicate that there is a letter here from George
13 Flinler, unfortunately September 26, 2005,
14 (indiscernible) attorney and he basically
15 indicates that the inmate is suitable for
16 parole. Is there anything else, Counsel, at
17 this time, that you would like to bring forth?

18 **ATTORNEY BECKNER:** There is a letter that
19 I received late last night, a support letter.

20 **PRESIDING COMMISSIONER LEE:** All right,
21 and this is from Clifford Jeffrey, J-e-f-f-r-e-
22 y. I have known the inmate for 38 years. His
23 family supports him. The inmate has spent the
24 majority of his adult life in prison. I have
25 stated before that Cornell has a great family
26 support besides me. Who is Clifford Jeffrey,
27 sir?

1 **INMATE WILDER:** One of my best friends.

2 **PRESIDING COMMISSIONER LEE:** He lives in
3 (Inaudible). If you were to get a date
4 (inaudible) most of your friends are in the
5 Stockton area?

6 **INMATE WILDER:** My friends are Stockton
7 and Tracy and the rest of my family.

8 **PRESIDING COMMISSIONER LEE:** Anything
9 else, Counsel?

10 **ATTORNEY BECKNER:** You were trying to
11 ascertain whether or not you received a couple
12 of letters from his sisters?

13 **PRESIDING COMMISSIONER LEE:** I don't have
14 anything. If I remember correctly, the last time
15 you were here, I had some letters, so I don't
16 think as big of an issue. I think he does have a
17 place to stay in Stockton. I think the bigger
18 problem was, of course, the job situation. I
19 don't have any letters.

20 **DEPUTY COMMISSIONER MEIJA:** (Inaudible).

21 **INMATE WILDER:** That's my niece.

22 **DEPUTY COMMISSIONER MEIJA:** Barbara
23 Holmes, sister.

24 **INMATE WILDER:** That's my sister.

25 **DEPUTY COMMISSIONER MEIJA:** Is that the
26 ones you are talking about? (Inaudible). I can
27 read this too.

1 **PRESIDING COMMISSIONER LEE:** I have them.
2 They are just basically letters supporting his
3 release as well as giving him a place to stay in
4 Stockton, correct?

5 **ATTORNEY BECKNER:** Did the niece reference
6 the job at all (inaudible)?

7 **PRESIDING COMMISSIONER LEE:** This is
8 Shinece Higgins, correct?

9 **INMATE WILDER:** Yes.

10 **PRESIDING COMMISSIONER LEE:** It wouldn't
11 be appropriate anyway, it is not on letterhead,
12 it is not an actual offer, so the desire is
13 there, but the paperwork is not supportive.
14 Having said that, at this point in time, I think
15 it is appropriate to go to statements. We do
16 not have a district attorney here, so, Mr.
17 Beckner, you may begin.

18 **ATTORNEY BECKNER:** Thank you. Mr. Wilder
19 has rehabilitated himself in prison. I believe
20 he has earned a second chance. I believe he
21 should be found suitable for parole. He has
22 admitted guilt for the life crimes. He has
23 taken responsibility for the life crimes. As he
24 has told you today, he has acknowledged fully
25 the lawfulness of his actions, and he is not
26 appeared to minimize or rationalize his role in
27 the offense, and he is genuinely genuinely

1 remorseful for his actions. He appears to have
2 the (indiscernible) the emotional level of the
3 harm done to the victim and the victim's family,
4 the harm done to his soul mate. The crime was
5 not committed during the commission of another
6 crime. It was not committed in a specially -
7 there were no multiple victims attacked. There
8 are not aggravating facts beyond the minimum
9 elements of the crime. There is no evidence
10 suggesting that he committed a greater degree of
11 the offense that his conviction evidences. The
12 crime was the result of some significant stress
13 in his life in that he was distraught when his
14 girlfriend broke up with him. Mr. Wilder has no
15 juvenile record, and his adult record is
16 minimal. He does not have a record of assaulting
17 others as an adult or committing crimes with the
18 intention of harming the victims. He has
19 experienced reasonably stable relations with
20 others in the prison. Prior to his
21 incarceration, he developed skills working as an
22 auto mechanic, an assembly worker, and a
23 machinists helper, and burner. You've all heard
24 today his excellent work record here in prison.
25 PIA print plants leads to the mechanic and now a
26 maintenance handyman. He has received almost
27 nothing but exceptional work reports, he has

1 been designated a critical worker since 1986.
2 He has been commended for his excellent attitude
3 and working well with supervisors. He has
4 participated in depression therapy group,
5 rational behavior training. Individual therapy,
6 personal growth seminars, alternative to
7 violence projects, stress management, anger
8 control group, alternatives to violence, a
9 project again. He has taken this personal
10 growth seminar, life skills. He has explained
11 to you why he has not taken Alcoholics Anonymous
12 (Indiscernible) Anonymous because of his self
13 discipline, he has not had a drink or done any
14 illegal drugs while in prison, although he has
15 been exposed to them and had the opportunity.
16 It is his own personal self respect and his will
17 that has allowed him not to do that. He has
18 been an active helper in prison, he assisted
19 with the hunger project, participated in a
20 research study. As you have seen, he has had an
21 excellent discipline record.
22 Since 1984, no 115's, and no 128's since 1990.
23 At the time of the crime, Mr. Wilder was only 30
24 years old; he is now 56. At this age, the
25 probability of recidivism is vastly reduced. His
26 parole plans are solid and feasible, residence
27 is assured with his sister, Barbara, but he can

1 also live with any of his other sisters in
2 Stockton. As he has told you, he has a very
3 close family support network consisting of his
4 sisters and their families and his mother and
5 friends that he still has in the Stockton area.
6 While the unfortunate tragedy of his brother's
7 death has eliminated a firm job offer, he has
8 very marketable skills in printing, auto
9 mechanics, and as a handyman that should enable
10 him to readily find employment. In fact, his
11 niece still working at the plant where his
12 brother was able to offer him a job, and she is
13 going to do her best to see that job offer
14 remains. On May 18, 2001, the Board denied Mr.
15 Wilder four years, and I was honestly
16 incredulous at that because his prior denial was
17 two years, and he had been discipline free in
18 the interim. The request was that he remain
19 discipline free, upgrade vocational education,
20 participate in self-help, and therapy. He has
21 addressed some for the Board's reason
22 (indiscernible) by upgrading vocationally, by,
23 in essence, getting a raise or promotion to a
24 position of multiple responsibility in PIA. He
25 has taken self-help and therapy and remained
26 discipline free. The reason he hasn't gotten
27 his GED in his own view, to him, it is a piece

1 of paper. He has educated himself far behind
2 taking a couple of courses in math, science, and
3 English. He reads books on religion and
4 philosophy, he also studies the penal code. He
5 studies the California Code of Regulations; he
6 was quoting it to me this morning. Whereas I
7 personally place a high value on education, I
8 strove to achieve as high educated as I could, I
9 recognize that is not everyone's thing. He has
10 done - his work record has been so stellar and
11 his skills are so stellar; he has focused on
12 that instead. He has seen a psychologist, Dr.
13 Cynthia Glens in her reported dated June 27,
14 2005, rated him as a low risk, and this was
15 based upon the following risk factors: low level
16 of psychopathy, significantly (indiscernible)
17 for a male offender, (indiscernible) low end to
18 moderate. His HCR20 is very low. She didn't cite
19 any high risk factors. Mr. Wilder has honestly
20 admitted his sense of responsibility of his
21 crimes, he demonstrated genuine remorse for his
22 crimes and sincere empathy for the victims, for
23 the victim and her family. As I discussed
24 earlier, the circumstances of a life of crime do
25 not suggest viciousness beyond the minimum
26 elements of second degree murder. As a result,
27 it is going to be difficult for the Board to

1 cite some evidence of aggravated facts beyond
2 the known elements of the crime. If the Board
3 does determine that the crime is aggravated to
4 some extent, under due process principles
5 contained in the Fifth and Fourteenth Amendments
6 to the United States Constitution and federal
7 due process rights to not be altered by a state
8 board, the denial of parole based on the
9 immutable facts of the life crime alone is only
10 allowed if there is other evidence of current
11 dangerousness. That was set forth by the Ninth
12 Circuit in Biggs versus Tehoon in 2003. To hold
13 otherwise would put Mr. Wilder in the impossible
14 situation where no matter what he shows in terms
15 of present rehabilitation, remorse, insight,
16 responsibility, and valid parole plans, he would
17 never be able to overcome the unchanging facts
18 of the life crime. In either case, given the
19 manner in which Mr. Wilder has programmed in
20 prison, given that his psychological evaluator
21 has an opinion that he would pose a low risk of
22 violence if released, given his advanced age,
23 and given that he has satisfactorily addressed
24 some of the Board's reasons for denying him
25 parole at his last hearing, has clearly
26 rehabilitated himself, and is no longer a threat
27 to public safety. Therefore, it is held by the

1 California Supreme Court in Henry Danonberg, he
2 must be granted parole, and to hold him any
3 longer would constitute excessive incarceration
4 in violation of the Cruel and Unusual Punishment
5 clause in the California Constitution Article I.
6 Section 17 and the Eight Amendment to the United
7 States Constitution. This is (indiscernible) by
8 the fact that Mr. Wilder has now served 25 ½
9 years of 15 to life sentence. His incarceration
10 extends beyond the Board's matrix for this
11 crime, which is 18, 19, 20 years. As the
12 California Supreme Court again held in
13 Danonberg, and I am going to quote, "No prisoner
14 can be held for a period grossly
15 disproportionate to his individual capability
16 for the committed offense. Just excessive
17 confinement violates the Cruel and Unusual
18 Punishment Clause of the California Constitution
19 Article I. Section 17. Thus, we acknowledge
20 Section 304 when (indiscernible) cannot
21 authorize such as inmate's retention, even for
22 reasons of public safety beyond this
23 constitution maximum period of confinement." I
24 respectfully submit that the 25 ½ years Mr.
25 Wilder has served places him beyond this
26 constitutional maximum period of confinement. I
27 believe the evidence demonstrates that Mr.

1 Wilder has rehabilitated himself, and he no
2 longer poses a threat to public safety.
3 However, even if the Board disagrees, because of
4 the length of time he has served, he must be
5 granted parole. To hold him any longer would
6 violate his Eighth Amendment and corresponding
7 California Constitutional rights. Please let
8 him go.

9 **PRESIDING COMMISSIONER LEE:** Mr. Wilder.

10 **INMATE WILDER:** Gentlemen, first let me
11 say I apologize for not taking AA (inaudible).
12 First off, believe me I do not choose to indulge
13 any type of illegal type of drugs, and I have no
14 interest in alcohol. Maybe it was a phase of I
15 probably went through and also not being able to
16 deal with the situations at that time. I know
17 individuals that have taken NA and AA and they
18 can come here and tell you they are clean and
19 they are not. I offer you the truth, I can't
20 offer you anything else, and ask that as to a
21 job, yes, I have an offer that can be made and
22 it would be a firm job offer, but it won't be in
23 janitorial. I have nothing against the Board,
24 but if I find it becomes a problem with me
25 because I always felt the sufficient of old
26 plans a place to stay was important, therefore,
27 I have financial support as well in place in

1 order to obtain a job once released. I have not
2 found in the regulations, and no disrespect to
3 the panel whatsoever, that requires it. I don't
4 think having some place to stay again that
5 allows me to obtain that position out there to
6 be able to try to sell yourself by letter is
7 hard, and if I didn't have a place to stay, I
8 would understand. I know I am capable of going
9 out, obtaining gainful employment, and being a
10 productive part of society. If you choose to
11 hold it against me, I also understand. I can
12 tell you this, once you granted parole, whenever
13 and if ever, I will not let the Panel down, and
14 they will be happy that they allowed me that
15 chance to demonstrate that I am a changed man. I
16 am not the individual that was put in prison in
17 1980, and I am not going to sit and try to
18 inflate or sell myself. I only ask you to
19 believe the truth that given the chance, I can
20 demonstrate I will be a productive part of
21 society and live within the laws of society.

22 **PRESIDING COMMISSIONER LEE:** Thank you,
23 Mr. Wilder. At this point, I am going to
24 recess. We will deliberate, we will call
25 everyone back once we have made a decision.
26 Thank you very much.

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R E C E S S

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1 **CALIFORNIA BOARD OF PAROLE HEARING**

2 **D E C I S I O N**

3 **DEPUTY COMMISSIONER MEJIA:** Back on the
4 record for our decision on Mr. Wilder.

5 **PRESIDING COMMISSIONER LEE:** The Panel has
6 reviewed all information received from the
7 public and in providing the following the
8 circumstances concluding the prisoner is not
9 suitable for parole, and may pose an
10 unreasonable risk of danger to society or a
11 threat to public safety if released from prison.
12 The offense was carried out in a dispassionate
13 and calculated manner, which was carried on in
14 which manages to demonstrate a callous disregard
15 for human suffering. The motive for the crime
16 was inexplicable and very trivial in
17 relationship to the offense. The inmate has
18 indicated that he was apparently was in a
19 relationship and for what ever reasons, we do
20 not know, the relationship fell apart. It was
21 indicated that there was no restraining,
22 however, you did note that there was some type
23 of tension between he and the victim. He
24 apparently attempted to contact the victim early
25 in the morning when she was going to work, and
26 he strangled her in a manner which obviously

1 caused her death. The prisoner has an
2 escalating of criminal conduct. He has failed
3 to profit from society's previous attempts to
4 correct his criminality, including adult
5 probation in the county jail. I'm not going to
6 hold the 115 against the inmate, it is too long
7 ago, it is 1984. Another reason for the denial
8 is lacks realistic parole plans, he does not
9 have residential plans in the last county of
10 legal residence, however, he does have
11 residential plans in Stockton, California. It
12 would seem that the Board could take that into
13 account if and when he is appropriate for
14 release. He does not have acceptable employment
15 plans, he does not have any certificates, though
16 he has indicated that he does have some training
17 on mechanics, car mechanics, before coming to
18 prison. The other reason for the denial, we
19 note the opposition from the District Attorney's
20 Office of Alameda County as well as the Oakland
21 Police Department. The Panel makes the
22 following findings: The prisoner needs therapy,
23 self-help, and programming in order to face,
24 discuss, understand, help with stress in a non-
25 destructive manner as well get further insight
26 into the crime. The inmate in the past has not
27 **CORNELL WILDER C-16564 DECISION PAGE 2 12/06/05**

1 indicated that he took full responsibility of
2 his actions. There have been denials in the
3 past and various versions, and the District
4 Attorney's office pointed that out. The inmate
5 has come to grips with it, but I think there
6 needs to be maintain that for a while. So,
7 until progress is made, the prisoner continues
8 to be unpredictable and a threat to others.
9 Nonetheless, the prisoner is committed for the
10 following:

11 **DEPUTY COMMISSIONER MEJIA:** He has been a
12 prisoner (inaudible) since 1984 and has
13 performed as a critical worker for the
14 institution. Since 1992, he has been valuable
15 service (inaudible) for the institution when it
16 comes to his operations and needs of
17 maintenance.

18 **PRESIDING COMMISSIONER LEE:** However,
19 these positive aspects of behavior do not
20 outweigh factors of unsuitability. In a
21 separate decision, the hearing panel has found
22 the prisoner has been convicted of murder, and
23 it is not reasonable to expect a hearing will be
24 granted in the next three years. Sir, I am in a
25 very difficult situation, and I will explain to
26 you my difficulty. My difficulty is this, I

1 don't agree with your attorney's interpretation
2 of Danonberg and Griggs, but that is neither
3 here nor there, that can be if necessary, that
4 could be written, and the Appellant Court can
5 decide that. My biggest problem is not the
6 crime itself. I truly believe, and based upon
7 Danonberg which is the Supreme Court of the
8 State of California, that the offense does or
9 can dictate whether or not an individual is
10 released and that the sentence itself is not 25
11 years, it is not the matrix, it is life.
12 Danonberg clearly indicates that it is part of
13 your sentence, life. What I have a problem with
14 is that you seem to be a very bright man, you
15 might have had sessions before, this is not the
16 first time you have spoken, but you seem
17 willful. For me, I make the - I endeavor to
18 make the attempt to look below appearances. I
19 have found in my life that not a lot of people
20 do. It is much more easy to do a knee jerk
21 appropriate action. I'm indicating to you that
22 is what is happening. You are coming across -
23 no, though, I don't think you are, but you are
24 coming across as I am going to do my own thing.
25 I don't care what the Board says. You went from
26 two to four the last time because you wouldn't
27 **CORNELL WILDER C-16564 DECISION PAGE 4 12/06/05**

1 get your GED, which I think you can do standing
2 on your head. That is just my opinion, and I
3 think you know that. The thing is, when you
4 come across like that, then we are in this
5 dilemma. You have a person who has committed a
6 murder, he has a life sentence, but he won't do
7 what people are asking him to do. Even in
8 regards to your alcohol, if you had told me,
9 look, you know what, I am going to go to AA even
10 though I don't need it, I am going to go to AA
11 anyway. That sounds different than when you sit
12 there and say, well, I've chosen not to drink.
13 Why is that different, because basically you can
14 choose not to drink. I mean you can choose back
15 to drink again. There is no magic in AA or
16 anything. If you find another program, fine, go
17 do that program, go read a book on it, I don't
18 care. The thing is, the AA has a track record,
19 and that is the difference. The track record,
20 of course, as you know, is probably based on the
21 support situation that other people will kind of
22 hold you accountable and these other things. I
23 don't know why it works, but it works. Our
24 problem is that people in prison, there is a
25 revolving door, you see them all the time, and
26 they say, ah, I'm not going to take any drugs,
27 **CORNELL WILDER C-16564 DECISION PAGE 5 12/06/05**

1 and they go back out in the street, and they
2 come back. That is the reason why the Board
3 emphasizes these things. It is not as though
4 you were in that situation where you never took
5 any drugs and you never took any alcohol. You
6 did have a problem with these areas. You have a
7 record. My opinion is that you come across that
8 way, I don't think necessarily you are that way,
9 but you've got to think about that. All right?
10 That is just a recommendation. Do with it what
11 you wish. The offence was carried and managed
12 with demonstrated sexual and callous disregard
13 for human suffering. Here was a women who if it
14 wasn't love or maybe still was in love with the
15 inmate at the time that he strangled her, there
16 is no such thing as a quick strangulation. The
17 motive of the crime was inexplicable and trivial
18 in relationship to the offense. We are not even
19 sure what went on based upon the inmates'
20 versions, and I will take the benefit of the
21 doubt, that he was never learned what the
22 problem was. The prisoner has a history of
23 (indiscernible) of unstable relationships with
24 others. The prisoner has not completed
25 necessary programming, which is essential to his
26 judgement and needs additional time to gain the
27 **CORNELL WILDER C-16564 DECISION PAGE 6 12/06/05**

1 programming. He has failed to participate fully
2 in some kind of substance abuse program or get
3 his GED as recommended by the Board in the past.
4 Therefore, (indiscernible) or evaluation, the
5 prisoner is required before the Board should
6 find the prisoner suitable for parole. The
7 Board makes the following recommendations:
8 Remain disciplinary free, upgrade vocationally
9 and educationally, and participate in self-help
10 and therapy programming. Sir, you know these
11 are recommendations, and I can't force you into
12 it, but you may find that the next Board will
13 not drop you a year like I did this year and
14 say, you are not listening to us, and we are
15 going to up you a year. There are commissioners
16 that will do that, you know that, all right, so
17 it is your choice, you know, good luck.

18 **INMATE WILDER:** Thank you, Commissioners.
19 Thank you for your time.

20 **PRESIDING COMMISSIONER LEE:** Good luck, Mr.
21 Wilder.

22 --oOo--

23 **PAROLE DENIED THREE YEAR**

24 **THIS DECISION WILL BE FINAL ON:** APR - 5 2006

25 **YOU WILL BE PROMPTLY NOTIFIED, IF PRIOR TO THAT**
26 **DATE THE DECISION IS MODIFIED.**


27 **CORNELL WILDER C-16564 DECISION PAGE 7 12/06/05**

CERTIFICATE AND
DECLARATION OF TRANSCRIBER

I, DEBORAH A. DOANE, a duly designated transcriber, PETERS SHORTHAND REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total one in number and cover a total of pages numbered 1 - 52, and which recording was duly recorded at CALIFORNIA MEN'S COLONY, SAN LUIS OBISPO, CALIFORNIA, in the matter of the SUBSEQUENT PAROLE CONSIDERATION HEARING OF CORNELL WILDER, CDC NO. C-16564, ON DECEMBER 6, 2005, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape to the best of my ability.

I hereby certify that I am a disinterested party in the above-mentioned matter and have no interest in the outcome of the hearing.

Dated DECEMBER 28, 2005, at Sacramento,
California.


DEBORAH A. DOANE
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CLERK OF THE COURT
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Per

Clerk of the United States District Court
for the Northern District of California
450 Golden Gate Avenue, Box 36060
San Francisco, California 94102